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Not for Publication

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

JOHN CUZDEY, III,

Petitioner - Appellant,

v.

JOHN IGNACIO, et al.,

Respondents - Appellees.

No. 02-15004

D.C. No. CV-00-00091-ECR

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Edward C. Reed, Jr., District Judge, Presiding

Argued and Submitted April 3, 2003
San Francisco, California

Before: **B. FLETCHER, KOZINSKI and TROTT**, Circuit Judges.

Petitioner relied on the district court's incorrect advice and is thus entitled to equitable tolling during the time his first federal petition was pending. See Smith v. Ratelle, No. 99-55824, 2003 U.S. App. LEXIS 5784, at *15 (9th Cir. Mar. 26, 2003) (finding equitable tolling where the district court "provided a

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

misleading explanation of [petitioner's] options to avoid a procedural default");
see also Ford v. Hubbard, 305 F.3d 875, 889 n.14 (9th Cir. 2002) (noting the
“district court’s error in failing properly and fully to inform [petitioner] about his
options with respect to the mixed petitions and in misleading him as to the legal
effect of a dismissal of his petitions” justified equitable tolling). Because the
tolling rendered petitioner’s claim timely, the court below erred by dismissing it.

REVERSED.